No. 77-1657

In the Supreme Court of the United States

OCTOBER TERM, 1977

TEXAS EMPLOYERS' INSURANCE ASSOCIATION,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The first opinion of the court of appeals (Pet. App. A-9 to A-13) is reported at 558 F. 2d 766. The opinion of the court of appeals on petition for rehearing (Pet. App. A-23 to A-25) is reported at 569 F. 2d 874. The opinions of the district court (Pet. App. A-3 to A-8) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on September 1, 1977. A timely petition for rehearing was denied on March 16, 1978. The petition for a writ of certiorari was filed on May 22, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the United States may recover from a workers' compensation insurance carrier the reasonable cost of medical care provided by the Veterans Administration to an injured employee, who was covered by state workers' compensation at the time of the accident and who assigned his compensation claim to the United States.

STATUTES AND REGULATIONS INVOLVED

1. Pertinent portions of the Veterans' Benefits Act of 1958, as amended, 38 U.S.C. (and Supp. V) 101 *et seq.*, of 38 C.F.R. 17.48(d), and of Section 3 of the Texas Workmen's Compensation Act (Tex. Rev. Civ. Stat. Art. 8306 (1967)) are reproduced at Pet. App. A-26 to A-35.

2. 38 C.F.R. 17.47 provides in relevant part:

> Within the limits of Veterans Administration facilities, hospital, domiciliary, or nursing home care may be furnished the following applicants.
>
> * * * * *
>
> (d) Hospital or nursing home care for any veteran[s] * * * provided they swear they are unable to defray the expense of hospital * * * care, and who are suffering from a disability, disease, or defect which, being susceptible to cure or decided improvement, indicates need for hospital care * * *.

3. Section 7 of the Texas Workmen's Compensation Act, Tex. Rev. Civ. Stat. Art. 8306 (1978 Cum. Supp.), provides in relevant part:

> The employee shall have the sole right to select or choose the persons or facilities to furnish medical aid, chiropractic services, hospital services, and nursing and the [Texas Employers' Insurance] [A]ssociation shall be obligated for same or, alternatively, at the employee's option, the association shall furnish such medical aid * * * as may reasonably be required at the time of the injury and at any time thereafter to cure and relieve from the effects naturally resulting from the injury.

STATEMENT

1. Henry H. Adams, a veteran, sustained a head injury while working at Affiliated Foods, Inc., which is subject to the Texas Workmen's Compensation Act (Pet. App. A-10). He was admitted to a Veterans Administration (VA) hospital and immediately transferred to a private hospital for surgery (App. 119).[1] A few days later Adams returned to the VA hospital, where he was treated until his discharge (Pet. App. A-10). The cost of the medical care provided or paid for by the VA was $1,989.85 (App. 119).

Adams was admitted to the VA hospital under 38 U.S.C. (Supp. V) 610(a)(1)(B), as amended by Pub. L. 94-581, Section 202(d)(2), 90 Stat. 2855, which authorizes the VA to provide medical and hospital care to veterans with non-service-connected disabilities who are "unable to defray the expenses of necessary hospital or nursing home care." The VA later learned, however, that Adams was able to pay such expenses because he was covered by a workers' compensation plan. In such cases, the VA is authorized by 38 C.F.R. 17.48(d) to request and receive an assignment from the injured employee of his medical and hospital care recovery rights. The VA billed Adams for the cost of his care and received from him an assignment of his medical and hospital expense recovery rights (Pet. App. A-10).

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[1] "App." refers to the joint appendix filed in the court of appeals.

Shortly after the accident the Texas Industrial Accident Board approved a "compromise settlement agreement" between Adams and petitioner (the workers' compensation insurance carrier). Petitioner agreed to pay "all accrued hospital and medical expenses resulting from [Adams'] injury—no exception" (Pet. App. A-10 to A-11). In light of that agreement, the VA forwarded the assignment it had received from Adams, and its bill for $1,989.85, to petitioner for payment (App. 118). Petitioner refused to pay the bill (App. 121). The VA applied to the Texas Industrial Accident Board for a ruling (App. 122), and the Board directed petitioner to pay the bill (App. 123). Instead of complying with that order, petitioner sought review of the order in a Texas state court, naming the United States as defendant (App. 103-107). The government removed the case to federal court and counterclaimed for $1,989.85 (App. 108-110).

2. On cross-motions for summary judgment, the district court held that the United States is not entitled to recover from petitioner the reasonable cost of the care provided by the VA (Pet. App. A-3 to A-8). The court indicated that its holding was based on the view that the government was seeking to recover under "a new substantive legal liability or right," which Congress had not authorized (Pet. App. A-7).

3. The court of appeals reversed, applying in this case the principles it adopted in a companion case, *United States* v. *Bender Welding & Machine Co.*, 558 F. 2d 761 (see Pet. App. A-14 to A-22). The court stated in *Bender Welding* that (Pet. App. A-16 to A-17):

> The key to the decision is an appreciation of the fact that the Veterans Administration is not required to provide free medical care to a veteran unless "[he] is unable to defray the expenses of necessary hospital care." If compensation coverage is treated as giving an employee the ability to defray expenses, it necessarily follows that medical services need not have been rendered by the Government without charge. If the services provided by the Veterans Hospital are not free, they would become a proper obligation of the compensation carrier to the employee.

The court held that the Texas Workmen's Compensation Act, which is based on "the broad economic theory that industrial accident costs should be chargeable to the industries as part of their overhead expenses" (Pet. App. A-12), gave Adams the ability to defray the expenses of his care (Pet. App. A-12 to A-13). Because Adams had a right to recover the reasonable cost of his care from petitioner, and because the Veterans' Benefits Act "was not intended to relieve an employer of his statutory duty of compensating an injured employee for the expenses incurred in the treatment of a job-related injury" (Pet. App. A-13), the court held that the United States is entitled to recover the cost of such care from petitioner, pursuant to the assignment authorized by 38 C.F.R. 17.48(d) and executed by Adams (Pet. App. A-13; see also *id.* at A-19). The court of appeals observed that "[a] contrary holding would be a windfall to the insurance carrier merely because the employee was a veteran able to obtain care at a V.A. hospital, and would be inconsistent with the right of recovery afforded a private hospital" (Pet. App. A-13).

Petitioner sought rehearing on the ground that Texas law prohibits the assignment of workers' compensation benefits (Pet. App. A-24). The court of appeals rejected this argument, holding that the VA regulation authorizing such assignments overrides any contrary state rule (*ibid.*). Moreover, the court observed that the purpose of the

Texas law prohibiting assignments is "to protect employees against the improvident distribution of benefits meant to sustain them during their period of disability and to protect them against old creditors' claims," whereas the assignment procured by the VA in this case "operates to the benefit of the injured worker because it allows the Veterans Administration to give treatment first and worry later about whether the worker was entitled to free care because of inability to defray the costs" (*ibid.*).

ARGUMENT

The decision of the court of appeals is correct, and we generally rely on its opinions. The decision does not conflict with any decision of this Court or any other court of appeals. Accordingly, there is no reason for review by this Court.

Petitioner relies on *United States* v. *Standard Oil Co.*, 332 U.S. 301, and *Pennsylvania National Mutual Casualty Insurance Co.* v. *Barnett*, 445 F. 2d 573 (C.A. 5), for the proposition that the United States may not recover from private parties the costs of medical care furnished by the United States. But this case and *Standard Oil* are quite different. In *Standard Oil* the government sought to recover hospitalization costs for a soldier struck by a truck, on a novel tort theory that the truck driver had interfered with a special relationship between the government and the soldier and had injured the government's interest (332 U.S. at 304 n. 5). In denying the government's claim, this Court held that the creation of such a new cause of action was a matter for Congress. The Court stressed that "[t]he Government's claim, of course, is not one for subrogation. * * * The Government does not contend that the liability sought has existed heretofore. It frankly urges the creation of a new one" (332 U.S. at 304 n. 5, 314 n. 21). The present case, by

contrast, involves subrogation; the government asserted its claim under the assignment it received from the injured employee. This case does not involve a new theory of tort or contract liability, and it does not involve "direct" liability to the United States. Petitioner's liability to Adams is undisputed. The United States' claim is no more novel than the assignor's claim, and nothing in *Standard Oil* prevents the United States from standing in Adams' shoes to recover on his valid claim.[2]

Petitioner's reliance on *Barnett* fares no better. In that case the court of appeals denied recovery to the government because it had not obtained an assignment from the injured employee (445 F. 2d at 574-575). Here, in contrast, the VA procured the necessary assignment. The court of appeals thus properly concluded that its decisions

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[2]The court of appeals properly upheld the assignment despite a state provision (Texas Workmen's Compensation Act, Tex. Rev. Civ. Stat. Art. 8306, §3) limiting the assignment of benefits (Pet. App. A-23 to A-25). The state provision protects employees against improvident distribution of benefits intended to sustain them during convalescence. The purpose of that provision is obviously served by applying such benefits to hospital expenses. Indeed, Section 7 of the state statute (see pages 2-3, *supra*) appears to contemplate allowing a health care provider to collect sums due for care furnished to the employee. The interpretation of this state law provision in the court below does not require review here, especially in light of the fact that the responsible state administrative agency allowed the United States' claim. Cf. *Bishop* v. *Wood*, 426 U.S. 341, 346.

At all events, the federal regulation allowing assignment would displace contrary state law. *Free* v. *Bland*, 369 U.S. 663. Moreover, the state statute limiting assignments is inapplicable here because of the settled principle that "[a] general statute imposing restrictions does not impose them upon the Government itself without a clear expression or implication to that effect." *United States* v. *Wittek*, 337 U.S. 346, 358-359 (footnote omitted); *Hancock* v. *Train*, 426 U.S. 167, 179.

are "consistent" (Pet. App. A-19).[3] In any event, any conflict between decisions of different panels of the same court would be for that court to resolve. *Wisniewski* v. *United States*, 353 U.S. 901, 902.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[3] The decision here is also consistent with the decisions of two federal district courts (*United States* v. *Kirkland*, 405 F. Supp. 1024 (E.D. Tenn.); *United States* v. *Chicago White Metal Casting Co.*, N.D. Ill., No. 73-C-2424, decided January 16, 1974 (see Pet. App. A-36 to A-42)) and five state courts (*Marty* v. *Western Auto Supply Co.*, 269 So. 2d 583 (La. Ct. App.); *Marshall* v. *Rebert's Poultry Ranch & Egg Sales*, 268 N.C. 223, 150 S.E. 2d 423; *Brauer* v. *J.C. White Concrete Co.*, 253 Iowa 1304, 115 N.W. 2d 202; *Stafford* v. *Pabco Products, Inc.*, 53 N.J. Super. 300, 147 A. 2d 286; *Higley* v. *Schlessman*, 292 P. 2d 411 (Okla. Sup. Ct.). Although *Texas Employers Insurance Association* v. *United States*, 390 F. Supp. 142 (N.D. Tex.), supports petitioner, that decision, by a district court in the Fifth Circuit, is of no effect as a precedent in light of the decision in the present case.

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